

# **9 FAM 41.59 Exhibit II**

## **CHAPTER 16 OF THE NORTH AMERICAN FREE TRADE AGREEMENT**

*(TL:VISA-175; 01-15-1998)*

### **Temporary Entry for Business Persons**

#### **Article 1601: General Principles**

Further to Article 102 (Objectives), this Chapter reflects the preferential trading relationship between the Parties, the desirability of facilitating temporary entry on a reciprocal basis and of establishing transparent criteria and procedures for temporary entry, and the need to ensure border security and to protect the domestic labor force and permanent employment in their respective territories.

#### **Article 1602: General Obligations**

1. Each Party shall apply its measures relating to the provisions of this Chapter in accordance with Article 1601 and, in particular, shall apply expeditiously those measures so as to avoid unduly impairing or delaying trade in goods or services or conduct of investment activities under this Agreement.
2. The Parties shall endeavor to develop and adopt common criteria, definitions and interpretations for the implementation of this Chapter.

#### **Article 1603: Grant of Temporary Entry**

1. Each Party shall grant temporary entry to business persons who are otherwise qualified for entry under applicable measures relating to public health and safety and national security, in accordance with this Chapter, including the provisions of Annex 1603.
2. A Party may refuse to issue an immigration document authorizing employment to a business person where the temporary entry of that person might affect adversely:
  - (a) the settlement of any labor dispute that is in progress at the place or intended place of employment; or
  - (b) the employment of any person who is involved in such dispute.
3. When a Party refuses pursuant to paragraph 2 to issue an immigration document authorizing employment, it shall:
  - (a) inform in writing the business person of the reasons for the refusal;

## **Continuation – 9 FAM 41.59 Exhibit II**

and

(b) promptly notify in writing the Party whose business person has been refused entry of the reasons for the refusal.

4. Each Party shall limit any fees for processing applications for temporary entry of business persons to the approximate cost of services rendered.

### **Article 1604: Provision of Information**

1. Further to Article 1802 (Publication), each Party shall:

(a) provide to the other Parties such materials as will enable them to become acquainted with its measures relating to this Chapter; and

(b) no later than one year after the date of entry into force of this Agreement, prepare, publish and make available in its own territory, and in the territories of the other Parties, explanatory material in a consolidated document regarding the requirements for temporary entry under this Chapter in such a manner as will enable business persons of the other Parties to become acquainted with them.

2. Subject to Annex 1604.2, each Party shall collect and maintain, and make available to the other Parties in accordance with its domestic law, data respecting the granting of temporary entry under this Chapter to business persons of the other Parties who have been issued immigration documentation, including data specific to each occupation, profession or activity.

### **Article 1605: Working Group**

1. The Parties hereby establish a Temporary Entry Working Group, comprising representatives of each Party, including immigration officials.

2. The Working Group shall meet at least once each year to consider:

(a) the implementation and administration of this Chapter;

(b) the development of measures to further facilitate temporary entry of business persons on a reciprocal basis;

(c) the waiving of labor certification tests or procedures of similar effect for spouses of business persons who have been granted temporary entry for more than one year under Section B, C or D of Annex 1603; and

(d) proposed modifications of or additions to this Chapter.

## Continuation – 9 FAM 41.59 Exhibit II

### Article 1606: Dispute Settlement

1. A Party may not initiate proceedings under Article 2007 (Commission - Good Offices, Conciliation and Mediation) regarding a refusal to grant temporary entry under this Chapter or a particular case arising under Article 1602(1) unless:

- (a) the matter involves a pattern of practice; and
- (b) the business person has exhausted the available administrative remedies regarding the particular matter.

2. The remedies referred to in paragraph (1)(b) shall be deemed to be exhausted if a final determination in the matter has not been issued by the competent authority within one year of the institution of an administrative proceeding, and the failure to issue a determination is not attributable to delay caused by the business person.

### Article 1607: Relation to Other Chapters

Except for this Chapter, Chapters One (Objectives), Two (General Definitions), Twenty (Institutional Arrangements and Dispute Settlement Procedures) and Twenty-Two (Final Provisions) and Articles 1801 (Contact Points), 1802 (Publication), 1803 (Notification and Provision of Information) and 1804 (Administrative Proceedings), no provision of this Agreement shall impose any obligation on a Party regarding its immigration measures.

### Article 1608: Definitions

For purposes of this Chapter:

**business person** means a citizen of a Party who is engaged in trade in goods, the provision of services or the conduct of investment activities;

**citizen means** “citizen” as defined in Annex 1608 for the Parties specified in that Annex;

**existing means** “existing” as defined in Annex 1608 for the Parties specified in that Annex; and

**temporary entry** means entry into the territory of a Party by a business person of another Party without the intent to establish permanent residence.

## **Continuation – 9 FAM 41.59 Exhibit II**

### **Annex 1603 Temporary Entry for Business Persons**

#### **Section A - Business Visitors**

1. Each Party shall grant temporary entry to a business person seeking to engage in a business activity set out in Appendix 1603.A.1, without requiring that person to obtain an employment authorization, provided that the business person otherwise complies with existing immigration measures applicable to temporary entry, on presentation of:

- (a) proof of citizenship of a Party;
- (b) documentation demonstrating that the business person will be so engaged and describing the purpose of entry; and
- (c) evidence demonstrating that the proposed business activity is international in scope and that the business person is not seeking to enter the local labor market.

2. Each Party shall provide that a business person may satisfy the requirements of paragraph 1(c) by demonstrating that:

- (a) the primary source of remuneration for the proposed business activity is outside the territory of the Party granting temporary entry; and
- (b) the business person's principal place of business and the actual place of accrual of profits, at least predominantly, remain outside such territory.

A Party shall normally accept an oral declaration as to the principal place of business and the actual place of accrual of profits. Where the Party requires further proof, it shall normally consider a letter from the employer attesting to these matters as sufficient proof.

3. Each Party shall grant temporary entry to a business person seeking to engage in a business activity other than those set out in Appendix 1603.A.1, without requiring that person to obtain an employment authorization, on a basis no less favorable than that provided under the existing provisions of the measures set out in Appendix 1603.A.3, provided that the business person otherwise complies with existing immigration measures applicable to temporary entry.

4. No Party may:

- (a) as a condition for temporary entry under paragraph 1 or 3, require prior approval procedures, petitions, labor certification tests or other procedures of similar effect; or

## **Continuation – 9 FAM 41.59 Exhibit II**

(b) impose or maintain any numerical restriction relating to temporary entry under paragraph 1 or 3.

5. Notwithstanding paragraph 4, a Party may require a business person seeking temporary entry under this Section to obtain a visa or its equivalent prior to entry. Before imposing a visa requirement, the Party shall consult with a Party whose business persons would be affected with a view to avoiding the imposition of the requirement. With respect to an existing visa requirement, a Party shall consult, on request, with a Party whose business persons are subject to the requirement with a view to its removal.

### **Section B - Traders and Investors**

1. Each Party shall grant temporary entry and provide confirming documentation to a business person seeking to:

(a) carry on substantial trade in goods or services principally between the territory of the Party of which the business person is a citizen and the territory of the Party into which entry is sought, or

(b) establish, develop, administer or provide advice or key technical services to the operation of an investment to which the business person or the business person's enterprise has committed, or is in the process of committing, a substantial amount of capital, in a capacity that is supervisory, executive or involves essential skills, provided that the business person otherwise complies with existing immigration measures applicable to temporary entry.

2. No Party may:

(a) as a condition for temporary entry under paragraph 1, require labor certification tests or other procedures of similar effect; or

(b) impose or maintain any numerical restriction relating to temporary entry under paragraph 1.

3. Notwithstanding paragraph 2, a Party may require a business person seeking temporary entry under the Section to obtain a visa or its equivalent prior to entry.

## **Continuation – 9 FAM 41.59 Exhibit II**

### **Section C - Intra-Company Transferees**

1. Each Party shall grant temporary entry and provide confirming documentation to a business person employed by an enterprise who seeks to render services to that enterprise or a subsidiary or affiliate thereof, in a capacity that is managerial, executive or involves specialized knowledge, provided that the business person otherwise complies with existing immigration measures applicable to temporary entry. A Party may require the business person to have been employed continuously by the enterprise for one year within the three-year period immediately preceding the date of the application for admission.

2. No Party may:

(a) as a condition for temporary entry under paragraph 1, require labor certification tests or other procedures of similar effect; or

(b) impose or maintain any numerical restriction relating to temporary entry under paragraph 1.

3. Notwithstanding paragraph 2, a Party may require a business person seeking temporary entry under this Section to obtain a visa or its equivalent prior to entry. Before imposing a visa requirement, the Party shall consult with a Party whose business persons would be affected with a view to avoiding the imposition of the requirement. With respect to an existing visa requirement, a Party shall consult, on request, with a Party whose business persons are subject to the requirement with a view to its removal.

### **Section D - Professionals**

1. Each Party shall grant temporary entry and provide confirming documentation to a business person seeking to engage in a business activity at a professional level in a profession set out in Appendix 1603.D.1, if the business person otherwise complies with existing immigration measures applicable to temporary entry, on presentation of:

(a) proof of citizenship of a Party; and

(b) documentation demonstrating that the business person will be so engaged and describing the purpose of entry.

2. No Party may:

(a) as a condition for temporary entry under paragraph 1, require prior approval procedures, petitions, labor certification tests or other procedures of similar effect; or

## **Continuation – 9 FAM 41.59 Exhibit II**

(b) impose or maintain any numerical restriction relating to temporary entry under paragraph 1.

3. Notwithstanding paragraph 2, a Party may require a business person seeking temporary entry under this Section to obtain a visa or its equivalent prior to entry. Before imposing a visa requirement, the Party shall consult with a Party whose business persons would be affected with a view to avoiding the imposition of the requirement. With respect to an existing visa requirement, a Party shall consult, on request, with a Party whose business persons are subject to the requirement with a view to its removal.

4. Notwithstanding paragraphs 1 and 2, a Party may establish an annual numerical limit, which shall be set out in Appendix 1603.D.4, regarding temporary entry of business persons of another Party seeking to engage in business activities at a professional level in a profession set out in Appendix 1603.D.1, if the Parties concerned have not agreed otherwise prior to the date of entry into force of this Agreement for those Parties. In establishing such a limit, the Party shall consult with the other Party concerned.

5. A Party establishing a numerical limit pursuant to paragraph 4, unless the Parties concerned agree otherwise:

(a) shall, for each year after the first year after the date of entry into force of this Agreement, consider increasing the numerical limit set out in Appendix 1603.D.4 by an amount to be established in consultation with the other Party concerned, taking into account the demand for temporary entry under this Section;

(b) shall not apply its procedures established pursuant to paragraph 1 to the temporary entry of a business person subject to the numerical limit, but may require the business person to comply with its other procedures applicable to the temporary entry of professionals; and

(c) may, in consultation with the other Party concerned, grant temporary entry under paragraph 1 to a business person who practices in a profession where accreditation, licensing, and certification requirements are mutually recognized by those Parties.

6. Nothing in paragraph 4 or 5 shall be construed to limit the ability of a business person to seek temporary entry under a Party's applicable immigration measures relating to the entry of professionals other than those adopted or maintained pursuant to paragraph 1.

7. Three years after a Party establishes a numerical limit pursuant to paragraph 4, it shall consult with the other Party concerned with a view to determining a date after which the limit shall cease to apply.

## **Continuation – 9 FAM 41.59 Exhibit II**

### **Appendix 1603.A.1 Business Visitors**

#### **Research and Design**

Technical, scientific and statistical researchers conducting independent research or research for an enterprise located in the territory of another Party.

#### **Growth, Manufacture and Production**

Harvester owner supervising a harvesting crew admitted under applicable law.

Purchasing and production management personnel conducting commercial transactions for an enterprise located in the territory of another Party.

#### **Marketing**

Market researchers and analysts conducting independent research or analysis or research or analysis for an enterprise located in the territory of another Party.

Trade fair and promotional personnel attending a trade convention.

#### **Sales**

Sales representatives and agents taking orders or negotiating contracts for goods or services for an enterprise located in the territory of another Party but not delivering goods or providing services.

Buyers purchasing for an enterprise located in the territory of another Party.

#### **Distribution**

Transportation operators transporting goods or passengers to the territory of a Party from the territory of another Party or loading and transporting goods or

passengers from the territory of a Party, with no unloading in that territory, to the territory of another Party.

With respect to temporary entry into the territory of the United States, Canadian customs brokers performing brokerage duties relating to the export of goods from the territory of the United States to or through the territory of Canada.



## **Continuation – 9 FAM 41.59 Exhibit II**

With respect to temporary entry into the territory of Canada, United States customs brokers performing brokerage duties relating to the export of goods from the territory of Canada to or through the territory of the United States.

Customs brokers providing consulting services regarding the facilitation of the import or export of goods.

### **After-Sales Service**

Installers, repair and maintenance personnel, and supervisors, possessing specialized knowledge essential to a seller's contractual obligation, performing services or training workers to perform services, pursuant to a warranty or other service contract incidental to the sale of commercial or industrial equipment or machinery, including computer software, purchased from an enterprise located outside the territory of the Party into which temporary entry is sought, during the life of the warranty or service agreement.

### **General Service**

Professionals engaging in a business activity at a professional level in a profession set out in Appendix 1603.D.1.

Management and supervisory personnel engaging in a commercial transaction for an enterprise located in the territory of another Party.

Financial services personnel (insurers, bankers or investment brokers) engaging in commercial transactions for an enterprise located in the territory of another Party.

Public relations and advertising personnel consulting with business associates, or attending or participating in conventions.

Tourism personnel (tour and travel agents, tour guides or tour operators) attending or participating in conventions or conducting a tour that has begun in the territory of another Party.

Tour bus operators entering the territory of a Party:

- (a) with a group of passengers on a bus tour that has begun in, and will return to, the territory of another Party;
- (b) to meet a group of passengers on a bus tour that will end, and the predominant portion of which will take place, in the territory of another Party; or

## Continuation – 9 FAM 41.59 Exhibit II

(c) with a group of passengers on a bus tour to be unloaded in the territory of the Party into which temporary entry is sought, and returning with no passengers or reloading with the group for transportation to the territory of another Party.

Translators or interpreters performing services as employees of an enterprise located in the territory of another Party.

### Definitions

For purposes of this Appendix:

**territory of another Party** means the territory of a Party other than the territory of the Party into which temporary entry is sought;

**tour bus operator** means a natural person, including relief personnel accompanying or following to join, necessary for the operation of a tour bus for the duration of a trip; and

**transportation operator** means a natural person, other than a tour bus operator, including relief personnel accompanying or following to join, necessary for the operation of a vehicle for the duration of a trip.

## **Continuation – 9 FAM 41.59 Exhibit II**

### **Appendix 1603.A.3 EXISTING IMMIGRATION MEASURES**

1. In the case of Canada, subsection 19(1) of the *Immigration Regulations, 1978*, SOR/78-172, as amended, made under the *Immigration Act*, R.S.C. 198S, c. I-2, as amended.
2. In the case of the United States, section 101(a)(15)(B) of the *Immigration and Nationality Act, 1952*, as amended.
3. In the case of Mexico, Chapter III of the *General Demography) Law* (“Ley General de Poblacion.”), 1974, as amended.

## Continuation – 9 FAM 41.59 Exhibit II

### Appendix 1603.D.1 PROFESSIONALS

PROFESSION <sup>1</sup>	MINIMUM EDUCATION REQUIREMENTS AND ALTERNATIVE CREDENTIALS
General	
Account	Baccalaureate or Licenciatura Degree; or C.P.A., C.A., C.G.A, or C.M.A.
Architect	Baccalaureate or Licenciatura Degree; or state/provincial license <sup>2</sup>
Computer Systems Analyst	Baccalaureate or Licenciatura Degree; or Post-Secondary Diploma <sup>3</sup> or Post-Secondary Certificate <sup>4</sup> , and three years experience
Disaster Relief Insurance Claims Adjuster (claims adjuster employed by an insurance company located in the territory of a Party, or an independent claims adjuster)	Baccalaureate or Licenciatura Degree and successful completion of training in the appropriate areas of insurance adjustment pertaining to disaster relief claims; or three years experience in claims adjustment and successful completion of training in the appropriate areas of insurance adjustment pertaining to disaster relief claims
Economist	Baccalaureate or Licenciatura Degree
Engineer	Baccalaureate or Licenciatura Degree; or state/provincial license
Forester	Baccalaureate or Licenciatura Degree; or state/provincial license

<sup>1</sup> A business person in this category must be seeking temporary entry to work in direct support of professionals ID agricultural sciences, astronomy, biology, chemistry, engineering, forestry, geology, geophysics, meteorology or physics.

<sup>2</sup> A business person in this category must be seeking temporary entry to perform in a laboratory chemical, biological, hematological, immunologic, microscopic or bacteriological tests and analyses for diagnosis, treatment or prevention of disease.

<sup>3</sup> "Post-Secondary Diploma" means a credential issued, on completion of two or more years of post-secondary education, by an accredited academic institution in Canada or the United States.

<sup>4</sup> "Post-Secondary Certificate" means a certificate issued, on completion of two or more years of post-secondary education at an academic institution, by the federal government or a state government, or an academic institution recognized by the federal government or a state government, or an academic institution created by federal or state law.

## Continuation – 9 FAM 41.59 Exhibit II

PROFESSION <sup>1</sup>	MINIMUM EDUCATION REQUIREMENTS AND ALTERNATIVE CREDENTIALS
Graphic Designer	Baccalaureate or Licenciatura Degree; or Post-Secondary Diploma or Post-Secondary Certificate, and three years experience
Hotel Manager	Baccalaureate or Licenciatura Degree in hotel/restaurant management; or Post-Secondary Diploma or Post-Secondary Certificate in hotel/restaurant management, and three years experience in hotel/restaurant management
Industrial Designer	Baccalaureate or Licenciatura Degree; or Post-Secondary Diploma or Post-Secondary Certificate, and three years experience
Interior Designer	Baccalaureate or Licenciatura Degree; or Post-Secondary Diploma or Post-Secondary Certificate, and three years experience
Land Surveyor	Baccalaureate or Licenciatura Degree; or state/provincial/federal license
Landscape architect	Baccalaureate or Licenciatura Degree
Lawyer (including Notary in the Province of Quebec)	LL.B., J.D., LL.L., B.C.L. or Licenciatura Degree (five years); or membership in a state/provincial bar
Librarian	M.L.S. or B.L.S. (for which another Baccalaureate or Licenciatura Degree was a prerequisite)
Management Consultant	Baccalaureate or Licenciatura Degree; or equivalent professional experience as established by statement or professional credential attesting to five years experience as a management consultant, or five years experience in a field of specialty related to the consulting agreement
Mathematician (including Statistician)	Baccalaureate or Licenciatura Degree
Range Manager/Range Conservationist	Baccalaureate or Licenciatura Degree
Research Assistant (working in a post-secondary education institution)	Baccalaureate or Licenciatura Degree
Physician (teaching or research only)	M.D. or Doctor en Medicina or state/provincial license
Physiotherapist/Physical Therapist	Baccalaureate or Licenciatura Degree; or state/provincial license

## Continuation – 9 FAM 41.59 Exhibit II

PROFESSION <sup>1</sup>	MINIMUM REQUIREMENTS AND ALTERNATIVE CREDENTIALS	EDUCATION AND
Psychologist	State/provincial license; or Licenciatura Degree	
Recreational Therapist	Baccalaureate Degree or Licenciatura Degree	
Registered Nurse	State/provincial license; or Licenciatura Degree	
Veterinarian	D.V.M., D.M.V. or Doctor en Veterinaria; or State/provincial license	
Scientist	Baccalaureate Degree or Licenciatura Degree	
Agriculturist (including Agronomist)	Baccalaureate Degree or Licenciatura Degree	
Animal Breeder	Baccalaureate Degree or Licenciatura Degree	
Apiculturist	Baccalaureate Degree or Licenciatura Degree	
Astronomer	Baccalaureate Degree or Licenciatura Degree	
Biochemist	Baccalaureate Degree or Licenciatura Degree	
Biologist	Baccalaureate Degree or Licenciatura Degree	
Chemist	Baccalaureate Degree or Licenciatura Degree	
Dairy Scientist	Baccalaureate Degree or Licenciatura Degree	
Entomologist	Baccalaureate Degree or Licenciatura Degree	
Epidemiologist	Baccalaureate Degree or Licenciatura Degree	
Geneticist	Baccalaureate Degree or Licenciatura Degree	
Geologist	Baccalaureate Degree or Licenciatura Degree	
Geochemist	Baccalaureate Degree or Licenciatura Degree	
Geophysicist (including Oceanographer in Mexico and the United States)	Baccalaureate Degree or Licenciatura Degree	
Horticulturist	Baccalaureate Degree or Licenciatura Degree	
Meteorologist	Baccalaureate Degree or Licenciatura Degree	
Pharmacologist	Baccalaureate Degree or Licenciatura Degree	
Physicist (including Oceanographer in Canada)	Baccalaureate Degree or Licenciatura Degree	
Plant Breeder	Baccalaureate Degree or Licenciatura Degree	
Poultry Scientist	Baccalaureate Degree or Licenciatura Degree	

## Continuation – 9 FAM 41.59 Exhibit II

PROFESSION <sup>1</sup>	MINIMUM REQUIREMENTS AND ALTERNATIVE CREDENTIALS	EDUCATION AND
Soil Scientist	Baccalaureate Degree	or Licenciatura
Zoologist	Baccalaureate Degree	or Licenciatura
Teacher	Baccalaureate Degree	or Licenciatura
College	Baccalaureate Degree	or Licenciatura
University	Baccalaureate Degree	or Licenciatura

## Continuation – 9 FAM 41.59 Exhibit II

### Appendix 1603.D.4 United States

1. Beginning on the date of entry into force of this Agreement as between the United States and Mexico, the United States shall annually approve as many as 5,500 initial petitions of business persons of Mexico seeking temporary entry under Section D of Annex 1603 to engage in a business activity at a professional level in a profession set out in Appendix 1603.D.1.

2. For purposes of paragraph 1, the United States shall not take into account:

- (a) the renewal of a period of temporary entry;
- (b) the entry of a spouse or children accompanying or following to join the principal business person;
- (c) an admission under section 1O1(a)(15)(H)(i)(b) of the *Immigration and Nationality Act*, 1952, as may be amended, including the worldwide numerical limit established by section 214(g)(1)(A) of that Act; or
- (d) an admission under any other provision of section 1O1(a)(15) of that Act relating to the entry of professionals.

3. Paragraphs 4 and 5 of Section D of Annex 1603 shall apply as between the United States and Mexico for no longer than:

- (a) the period that such paragraphs or similar provisions may apply as between the United States and any other Party other than Canada or any non-Party; or
- (b) 10 years after the date of entry into force of this Agreement as between such Parties, whichever period is shorter.



## **Continuation – 9 FAM 41.59 Exhibit II**

### **Annex 1604.2 Provision of Information**

The obligations under Article 1604(2) shall take effect with respect to Mexico one year after the date of entry into force of this Agreement.

## **Continuation – 9 FAM 41.59 Exhibit II**

### **Annex 1608 Country - Specific Definitions**

For purposes of this Chapter:

**citizen** means, with respect to Mexico, a national or a citizen according to the existing provisions of Articles 30 and 34, respectively, of the Mexican Constitution; and

**existing** means, as between:

- (a) Canada and Mexico, and Mexico and the United States, in effect on the date of entry into force of this Agreement; and
- (b) Canada and the United States, in effect on January 1, 1989.